(6)

No. 99-97

Supreme Court, U.S.
FILED
FEB 25 2000
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Warren J. Michaels, Executor,
Estate of Edna L. Nelson,
Petitioner,

v.

Bank of America N.T. & S.A. and
Citizens Federal Bank,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

Warren J. Michaels, Executor,
Estate of Edna L. Nelson
In Propria Persona
2245 Gene Autry Trail, Unit E
Palm Springs, California 92264
(760) 770-3653

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner submits the following new matter in accordance with Rule 15.8 and as noted on page five (5) of his Reply to Brief in Opposition.

On January 13, 2000, a hearing in related cases remanded from the United States Court of Appeals for the Ninth Circuit was heard in the Bankruptcy Court for the Central District of California, Riverside Division.

On February 23, 2000, Petitioner received the official transcript of the hearing of the above matters. The relevant portions of the hearing transcript are in the Appendix included herein immediately following this Supplemental Brief. (See Pages 4 through 12).

At the hearing, the bankruptcy judge admitted that he owned stock in Bank of America during the pendency of the bankruptcy case at times when he made rulings as to the Bank. (See Pages 6 & 8). In fairness to an objective reading of the transcript, the bankruptcy judge hedged his position as to his knowledge of holding Bank of America stock at the time. (See Page 6). However, with all due respect to the Court, the bankruptcy judge's hedge statements cannot be considered credible because of the timing and duration of his stock holding in Bank of America reported by him in his financial disclosure reports.
(See Petition, Page 3).

The integrity of the federal judiciary is a public issue that is too important to consider delving into comparisons between a judge's ambiguous statements and what he discloses publicly in his financial disclosure reports. With all due respect for the integrity of all judges, and to their right to be heard fairly, knowledge of financial holdings should be imputed from their financial disclosure reports under the

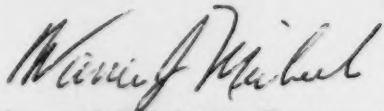
circumstances of this case because a reasonable person would not believe otherwise.

CONCLUSION

In imputing knowledge to a federal judge from his or her financial disclosure reports, the Court should apply the reasoning stated by the Ninth Circuit in *Davis v. Xerox*, 811 F.2d 1293 (9th Cir 1987). (See Reply Brief, Page 5).

The importance of the judge disqualification issue does not detract from the historic importance of one of the other questions presented in this case, the exclusive jurisdiction of the federal courts under Section 1334 of the Judicial Code of the United States.

Respectfully submitted,



Warren J. Michaels, Executor
Estate of Edna L. Nelson
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2245 Gene Autry Trail, Unit E
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February 24, 2000

APPENDIX
TO
PETITIONER'S SUPPLEMENTAL BRIEF

ORIGINAL

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

--oOo—

In Re:	) Case No. RS91-19414-MG
Ralph Gilbert Nelson,	) Riverside, California
	) Thursday, January 13, 2000
Debtor.	) 2:30 P.M.
	) Chapter 7
Warren J. Michaels, Executor of the Estate of Edna L. Nelson,	) Adv. No. RS95-01439-MG
	) Order for Status Conference
Plaintiff,	) re remand of certain issues.
vs.	)
Bank of America National Trust,	)
Defendant.	)
Warren J. Michaels, Executor of the estate of Edna L. Nelson.	) Adv. No. RS95-01435-MG
	) Status Conference re recent
Plaintiff,	) remand of certain issues.
vs.	)
Las Palmas Professional Center, Inc.,	)
Defendant.	)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MITCHEL R. GOLDBERG
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor: Ralph Gilbert Nelson, pro per
(Address nor provided)

For Estate of Edna L. Nelson: Warren J. Michaels
Executor of the Estate
of Edna L. Nelson
2245 Gene Autry Trail, Unit E
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Court Recorder: Constance Cummins
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Riverside, CA 92501
(909) 774-1000

Transcription Service: V/ARS, Inc.
2430 K Street
Suite 100
Sacramento, CA 95816
(916) 448-2457

Proceedings recorded by electronic sound recording.
Transcript produced by transcription service.

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MR. MICHAELS:

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I think there are very important issues, but here is the issue that I see that relates to you. And I don't mean to embarrass you one bit, but as far as I'm concerned, in the issue before the United States Supreme Court, one of the issues is the conflict of interest that you had with B of A in the case.

And I think that as far as you can go in this case, even with the ones that remained, is to suggest settlement, and if I can reach a settlement with all of these defendants, have another bankruptcy judge sign the order of settlement, because this issue is - -

THE COURT: Yeah. Judge Naugle, in the issue of B of A ruled, and I think correctly so in light of the criteria, unbeknownst to me, since I had someone else managing my affairs, I owned some stock in B of A at the time I made rulings. I mean, I recognize that, that's why I had someone else deal with it. Didn't know it at the time, but turns out I did, and you've searched, I guess, my financials and figured it out.

So, the reality is, is that I agree with you on that. I probably will not hear the B of A matters.

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I no longer have an interest in B of A, but I don't think that matters.

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MR. MICHAELS:

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But the next thing, I actually - - I don't want to, but I have to make another recusal motion because Judge Naugle denied without prejudice that recusal motion.

THE COURT: As to the B of A.

MR. MICHAELS: Right. Unless you disqualify yourself.

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But, you know, these cases are not - -

THE COURT: I would not like to bury another judge with this case but I probably will recuse myself on B of A.

MR. MICHAELS: I wouldn't either, and that's why I think the parties here have a responsibility to the Courts, because this case has been a disgrace.

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THE COURT: -- Three of the units, that the issues to B of A, not only do we have to get it clarified, and they're not present today for whatever reason, but that as to the B of A, we have to deal with the subsequent issue that because the period of time I held an extremely small amount of stock in B of A, or based on my financial records through a management company that was managing specific stocks, buying and selling them, I believe under the guidelines that have been issued that I do have to recuse myself.

What I don't know is if because during the time this case was up at the Appellate Court and the Appellate Court has remanded, and during that period of time I've divested myself of a management company that just took money, invested in 50 shares here and just put it all in mutual funds so I can avoid that problem, --

MR. MICHAELS: Uh-huh.

THE COURT: -- that whether or not, because there was a prior ownership during the course of the case, I would have to recuse myself. Assuming I do, if there is anything there that does it, I'd love to recuse myself from this case - -

MR. MICHAELS: I understand that, and --

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THE COURT: -- for a whole variety of reasons. I just feel very bad that another judge would have to pick this mess up.

MR. MICHAELS: Absolutely. I think I would feel bad that another bankruptcy judge would have to pick up this case.

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THE COURT: I'm going to give a noticed trial-setting conference on the B of A matter, and that the Court will consider sanctions if appearances are not made.

On the B of A case, and I believe the third cause of action for fraud and misrepresentation is in the – I believe that's in the – which case number is that in, the medical?

MR. MICHAELS: 1439.

THE COURT: 1439.

MR. MICHAELS: Medical Condo.

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THE COURT: Okay. I'm more interested – the third claim is what was sent back. I will have an amended status conference on the remanded issues in case No. 1439.

I want you to give notice on this, Mr. Michaels, and I want you to put in the notice that failure of Bank of America to attend and to present a statement of its position at least one week before the hearing, to the extent it has a position as -- other than to go forth to trial, will result in potential sanctions. I want to put them on written notice on that issue.

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But I want to have a meeting with B of A to determine two issues.

With the B of A issue on misrepresentation and fraud coming back, the 9th Circuit said that while I had the right to abstain on one issue, I made – the rulings I made on the other issue were inappropriate because I treated them as 362(h) issues.

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And so B of A needs to sit down. If it wishes to argue that I've abstained and you should initiate lawsuits in State Court for fraud and misrepresentation, fraudulent sales, they better file papers and have a motion on that if they want to do it, otherwise, they better show up in my court.

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MR. MICHAELS: But the problem is, is that showing up at your court at this point in time when you were disqualified when you made your ruling, --

THE COURT: Well, --

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Well, if you wish to file a paper that all matters relating to B of A, I should recuse myself, renew your motion.

MR. MICHAELS: Yeah. I have to do that because - -

THE COURT: I have no problem with it.

MR. MICHAELS: -- I have to protect the estate's legal rights.

THE COURT: In order to get some timing going, file your motion. I will take a look at it. If I rule that I have to recuse myself, and notice B of A on it, I'll set that matter out far enough that you can file your motion. I have no problem with you filing your motion.

MR. MICHAELS: Okay.

THE COURT: My skin isn't that thin.

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Okay. To file your motion at least will determine (a) whether I refer it over to someone else like Judge Naugle to hear it again, or whether I rule on my own. I will only rule on my own if I'm going to rule against me. I generally will not rule, saying, you know, I have standing. I'd rather have someone else do that.

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But to the extent if you at least file the motion, until something is done, I want to get B of A into the courtroom.

MR. MICHAELS: Okay. I - -

THE COURT: And I think that's advantageous to you.

MR. MICHAELS: Well, sure, but - -

THE COURT: Okay. So, whether it's going to be me, someone else, whether it's going to be sent to State Court on an abstention issue, because all those issues are state law issues as much as they have relationship to the bankruptcy case, but there is an overlap.

MR. MICHAELS: Right.

THE COURT: Whoever is going to decide it, whether it be me or someone else, I want to get the ball rolling, and so by setting up some hearing dates, I'm not asking you that you consent that I have jurisdiction. I'm just ordering - - the 9 th Circuit sent the case back. There has been no ruling that I must recuse myself. It's without prejudice. Now that B of A is back, renew your motion if you so desire. I'm not going to be offended by it.

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceeding in the above entitled matter.

S/ Gwen J. Van Every February 17, 2000
Gwen J. Van Every, Transcriber

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